IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

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PRESENT

**THE HON'BLE MR JUSTICE A.GOPAL REDDY**

**WRIT PETITION NO : 17255 of 2004**

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Between:

The Fishermen Co.operative Society Ltd., Kesavaram,

Regd.No.B-97, Kesavaram, Mandapeta Mandal, East

Godavari District, rep., by its President Chukka Ramana

**..... PETITIONER**

AND

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1 The Gram Panchayat, Velagathodu,
Mandapeta Mandal, East Godavari District rep., by its
Panchayat Secretary.
2 The Divisional Panchayat Officer, Rajahmundry, East

Godavari District.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 1st respondent Gram Panchayat in not granting the leasehold rights of fishing in Redlamma Tank situated in Velagathodu at the upset price fixed by the 2nd respondent in L.Dis.No.1565/2004/A, dt.05-08-04 as illegal, arbitrary and unjust and consequently direct the 1st respondent to grant leasehold rights of fishing in the said tank forthwith to the petitioner society.

**Counsel for the Petitioner: MR.N.SIVA REDDY**

**Counsel for Respondents: MR.SRINIVAS DAMMALAPATI**

**The Court at the admission stage made the following :**

**ORDER**:

Heard learned counsel for the petitioner and learned Standing Counsel for respondents. Both have no objection for disposal of the writ petition at the admission stage.

On expiry of the lease period granted to the petitioner for fishing rights in the Redlamma Tank situated in Velagathodu Gram Panchayat, Mandapeta Mandal, East Godavari District, the Gram Panchayat passed resolution on 3-8-2004 requesting the Divisional Panchayat Officer, second respondent herein to fix the upset price of the lease of fishing rights in the tank of the Gram Panchayat for a period of 3 years commencing from 1-7-2004 to 30-6-2007. The Second respondent in his proceedings dated 5-8-2004 fixed the upset price of the lease of fishing rights in the tank at Rs.1,05,000/-. On receipt of the same, the first respondent-Gram Panchayat issued proceedings in Rc.No.48 dated 11-8-2004 asking the petitioner's willingness to take the lease at the upset price of Rs.1,05,000/-. The petitioner accepted the upset price and agreed to take the lease of fishing rights over the said tank and intimated the same to the Gram Panchayat in its letter dated 13-8-2004. While so, the members of the Gram Panchayat passed a resolution on 4-9-2004 requesting the second respondent to reconsider the upset price fixed by him as they feel that the said price is very low, and the same was communicated to the second respondent by the Panchayat Secretary vide his letter dated 14-9-2004. Questioning the same, the present writ petition is filed contending that once the upset price is fixed by the second respondent and the petitioner accepted the same, he is entitled to grant lease hold rights and not granting the same is arbitrary and illegal.

Learned counsel for the petitioner submits that as per the Rules relating to Leasing of Fishery Rights in Minor Irrigation Tanks, and Other Sources Vested in the Gram Pranchayats under the Andhra Pradesh Panchayat Raj Act, 1964 issued in G.O.Ms.No.343 dated 10-4-1978 the upset price fixed by the Divisional Panchayat Officer can be revisable only by the Collector. In the absence of any such revision by the Collector, Gram Panchayat cannot pass any resolution to reconsider the upset price fixed.

No rules were framed after coming into force of the Andhra Pradesh Panchayat Raj Act, 1994 on repeal of 1964 Act but, instructions were issued by the Commissioner of Panchayat Raj in Circular No.9410/GPF/G1/97 dated 5-2-1999 stating that the Executive Authority shall forward the proposals for fixation of upset price basing on the recommendation of Inspector of Fisheries for the approval of the District Panchayat Officer. The District Panchayat Officer shall within 7 days of

receipt of such proposal return it to the Executive authority with his approval. In case he intends to make any revision, he should submit his remarks to the Collector and with his approval indicate the revised upset price to the Gram Panchayat.

In view of the same, since the Gram Panchayat earlier has not passed any resolution nor submitted any proposal on the recommendation of the inspector of fisheries, the Gram Panchayat, treating that the upset price is very low, thought it fit to request the District Panchayat Officer to refix the upset price. In view of the same, the District Panchayat Officer in consultation with the District Collector is directed to consider the same and refix the upset price within a period of two weeks from the date of receipt of a copy of this order and intimate the same to the Gram Panchayat on such intimation the Gram Panchayat shall necessarily follow the due procedure. It is needless to observe that the Gram Panchayat has to seek the consent of the petitioner for obtaining the leasehold rights of fishing in the said tank on finalisation of the upset price.

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**A. Gopal Reddy, J.**

24th September, 2004.

Note: C.C. in two days

B/o

Js.

ASSISTANT REGISTRAR

To

1 The Panchayat Secretary, Gram Panchayat

Velagathodu, Mandapeta Mandal, East Godavari

District.

2 The Divisional Panchayat Officer, Rajahmundry, East

Godavari District.

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